

Introduced by Senator Yee

February 22, 2007

An act to amend Section 1950.5 of the Civil Code, relating to residential tenancies.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as introduced, Yee. Residential tenancies: security deposits.

Existing law limits the amount or value of security that a landlord may demand or receive for residential property that is used as the dwelling of the tenant to 2 months' rent for unfurnished residential property and 3 months' rent for furnished property. Existing law defines a "security" for purposes of these provisions to include a payment, fee, deposit, or charge that is imposed at the beginning of a tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, as specified. These provisions impose various notice requirements on the landlord, require the landlord to issue an itemized statement regarding the security and return the remaining portion of the security to the tenant, and authorize a tenant to make a request for documentation after receiving the statement, as specified. The bad faith claim or retention of the security or a portion thereof by the landlord or the landlord's successor in interest in violation of these provisions may subject the landlord to statutory damages of up to twice the amount of the security, in addition to actual damages. Existing law also prohibits a lease or rental agreement from containing any provision characterizing any security as "nonrefundable."

This bill would revise the definition of a security to additionally specify that it is imposed by a landlord. The bill would authorize a tenant to purchase a bond or commercial insurance policy to secure the

performance of the terms and conditions of a rental agreement, in lieu of posting a security deposit with the landlord. The bill would provide that a tenant who purchases a bond or commercial insurance policy would be afforded all the notice and other rights provided pursuant to these provisions for security deposits, and, for purposes of these provisions, that bond or commercial insurance policy, excluding any premium paid for the bond or commercial insurance policy, would be treated as a security. The bill would provide that the premium paid for the bond or commercial insurance policy, unlike a security deposit, could be characterized as nonrefundable.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1950.5 of the Civil Code is amended to
2 read:
3 1950.5. (a) This section applies to security for a rental
4 agreement for residential property that is used as the dwelling of
5 the tenant.
6 (b) (1) As used in this section, “security” means any payment,
7 fee, deposit or charge, including, but not limited to, any payment,
8 fee, deposit, or charge, except as provided in Section 1950.6, that
9 is imposed at the beginning of the tenancy *by a landlord* to be used
10 to reimburse the landlord for costs associated with processing a
11 new tenant or that is imposed as an advance payment of rent, used
12 or to be used for any purpose, including, but not limited to, any of
13 the following:
14 ~~(1)~~
15 (A) The compensation of a landlord for a tenant’s default in the
16 payment of rent.
17 ~~(2)~~
18 (B) The repair of damages to the premises, exclusive of ordinary
19 wear and tear, caused by the tenant or by a guest or licensee of the
20 tenant.
21 ~~(3)~~
22 (C) The cleaning of the premises upon termination of the tenancy
23 necessary to return the unit to the same level of cleanliness it was
24 in at the inception of the tenancy. The amendments to this
25 paragraph enacted by the act adding this sentence shall apply only

1 to tenancies for which the tenant's right to occupy begins after
2 January 1, 2003.

3 ~~(4)~~

4 (D) To remedy future defaults by the tenant in any obligation
5 under the rental agreement to restore, replace, or return personal
6 property or appurtenances, exclusive of ordinary wear and tear, if
7 the security deposit is authorized to be applied thereto by the rental
8 agreement.

9 (2) *A tenant may purchase a bond or commercial insurance*
10 *policy to secure the performance of the terms and conditions of a*
11 *rental agreement in lieu of posting a security deposit, with the*
12 *landlord. A tenant who purchases that bond or policy shall be*
13 *entitled to all of the notice and other rights provided by this section*
14 *and, for purposes of this section, the bond or policy, excluding any*
15 *premium paid for it, shall be treated as a security.*

16 (c) A landlord may not demand or receive security, however
17 denominated, in an amount or value in excess of an amount equal
18 to two months' rent, in the case of unfurnished residential property,
19 and an amount equal to three months' rent, in the case of furnished
20 residential property, in addition to any rent for the first month paid
21 on or before initial occupancy.

22 This subdivision does not prohibit an advance payment of not
23 less than six months' rent if the term of the lease is six months or
24 longer.

25 This subdivision does not preclude a landlord and a tenant from
26 entering into a mutual agreement for the landlord, at the request
27 of the tenant and for a specified fee or charge, to make structural,
28 decorative, furnishing, or other similar alterations, if the alterations
29 are other than cleaning or repairing for which the landlord may
30 charge the previous tenant as provided by subdivision (e).

31 (d) Any security shall be held by the landlord for the tenant who
32 is party to the lease or agreement. The claim of a tenant to the
33 security shall be prior to the claim of any creditor of the landlord.

34 (e) The landlord may claim of the security only those amounts
35 as are reasonably necessary for the purposes specified in *paragraph*
36 *(1) of subdivision (b)*. The landlord may not assert a claim against
37 the tenant or the security for damages to the premises or any
38 defective conditions that preexisted the tenancy, for ordinary wear
39 and tear or the effects thereof, whether the wear and tear preexisted
40 the tenancy or occurred during the tenancy, or for the cumulative

1 effects of ordinary wear and tear occurring during any one or more
2 tenancies.

3 (f) (1) Within a reasonable time after notification of either
4 party's intention to terminate the tenancy, or before the end of the
5 lease term, the landlord shall notify the tenant in writing of his or
6 her option to request an initial inspection and of his or her right to
7 be present at the inspection. The requirements of this subdivision
8 do not apply when the tenancy is terminated pursuant to subdivision
9 (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At
10 a reasonable time, but no earlier than two weeks before the
11 termination or the end of lease date, the landlord, or an agent of
12 the landlord, shall, upon the request of the tenant, make an initial
13 inspection of the premises prior to any final inspection the landlord
14 makes after the tenant has vacated the premises. The purpose of
15 the initial inspection shall be to allow the tenant an opportunity to
16 remedy identified deficiencies, in a manner consistent with the
17 rights and obligations of the parties under the rental agreement, in
18 order to avoid deductions from the security. If a tenant chooses
19 not to request an initial inspection, the duties of the landlord under
20 this subdivision are discharged. If an inspection is requested, the
21 parties shall attempt to schedule the inspection at a mutually
22 acceptable date and time. The landlord shall give at least 48 hours'
23 prior written notice of the date and time of the inspection if either
24 a mutual time is agreed upon, or if a mutually agreed time cannot
25 be scheduled but the tenant still wishes an inspection. The tenant
26 and landlord may agree to forgo the 48-hour prior written notice
27 by both signing a written waiver. The landlord shall proceed with
28 the inspection whether the tenant is present or not, unless the tenant
29 previously withdrew his or her request for the inspection.

30 (2) Based on the inspection, the landlord shall give the tenant
31 an itemized statement specifying repairs or cleaning that are
32 proposed to be the basis of any deductions from the security the
33 landlord intends to make pursuant to ~~paragraphs (1) to (4)~~
34 *subparagraphs (A) to (D), inclusive, of paragraph (1) of*
35 *subdivision (b).* This statement shall also include the texts of
36 ~~paragraphs (1) to (4) subparagraphs (A) to (D), inclusive, of~~
37 *paragraph (1) of subdivision (b).* The statement shall be given to
38 the tenant, if the tenant is present for the inspection, or shall be
39 left inside the premises.

1 (3) The tenant shall have the opportunity during the period
2 following the initial inspection until termination of the tenancy to
3 remedy identified deficiencies, in a manner consistent with the
4 rights and obligations of the parties under the rental agreement, in
5 order to avoid deductions from the security.

6 (4) Nothing in this subdivision shall prevent a landlord from
7 using the security for deductions itemized in the statement provided
8 for in paragraph (2) that were not cured by the tenant so long as
9 the deductions are for damages authorized by this section.

10 (5) Nothing in this subdivision shall prevent a landlord from
11 using the security for any purpose specified in ~~paragraphs (1) to~~
12 ~~(4) subparagraphs (A) to (D), inclusive, of paragraph (1) of~~
13 subdivision (b) that occurs between completion of the initial
14 inspection and termination of the tenancy or was not identified
15 during the initial inspection due to the presence of a tenant's
16 possessions.

17 (g) (1) No later than 21 calendar days after the tenant has
18 vacated the premises, but not earlier than the time that either the
19 landlord or the tenant provides a notice to terminate the tenancy
20 under Section 1946 or 1946.1, Section 1161 of the Code of Civil
21 Procedure, or not earlier than 60 calendar days prior to the
22 expiration of a fixed-term lease, the landlord shall furnish the
23 tenant, by personal delivery or by first-class mail, postage prepaid,
24 a copy of an itemized statement indicating the basis for, and the
25 amount of, any security received and the disposition of the security
26 and shall return any remaining portion of the security to the tenant.

27 (2) Along with the itemized statement, the landlord shall also
28 include copies of documents showing charges incurred and
29 deducted by the landlord to repair or clean the premises, as follows:

30 (A) If the landlord or landlord's employee did the work, the
31 itemized statement shall reasonably describe the work performed.
32 The itemized statement shall include the time spent and the
33 reasonable hourly rate charged.

34 (B) If the landlord or landlord's employee did not do the work,
35 the landlord shall provide the tenant a copy of the bill, invoice, or
36 receipt supplied by the person or entity performing the work. The
37 itemized statement shall provide the tenant with the name, address,
38 and telephone number of the person or entity, if the bill, invoice,
39 or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

(3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be completed within 21 calendar days after the tenant has vacated the premises, or if the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession within 21 calendar days after the tenant has vacated the premises, the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the manner specified.

(4) The landlord need not comply with paragraph (2) or (3) if either of the following apply:

(A) The deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars (\$125).

(B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall only be effective if it is signed by the tenant at the same time or after a notice to terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

(5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3) when a tenant makes a request for documentation within 14 calendar days after receiving the itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days after receiving the request from the tenant.

(6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address provided by the tenant. If the tenant does

1 not provide an address, mailings pursuant to this subdivision shall
2 be sent to the unit that has been vacated.

3 (h) Upon termination of the landlord's interest in the premises,
4 whether by sale, assignment, death, appointment of receiver or
5 otherwise, the landlord or the landlord's agent shall, within a
6 reasonable time, do one of the following acts, either of which shall
7 relieve the landlord of further liability with respect to the security
8 held:

9 (1) Transfer the portion of the security remaining after any
10 lawful deductions made under subdivision (e) to the landlord's
11 successor in interest. The landlord shall thereafter notify the tenant
12 by personal delivery or by first-class mail, postage prepaid, of the
13 transfer, of any claims made against the security, of the amount
14 of the security deposited, and of the names of the successors in
15 interest, their address, and their telephone number. If the notice to
16 the tenant is made by personal delivery, the tenant shall
17 acknowledge receipt of the notice and sign his or her name on the
18 landlord's copy of the notice.

19 (2) Return the portion of the security remaining after any lawful
20 deductions made under subdivision (e) to the tenant, together with
21 an accounting as provided in subdivision (g).

22 (i) Prior to the voluntary transfer of a landlord's interest in the
23 premises, the landlord shall deliver to the landlord's successor in
24 interest a written statement indicating the following:

25 (1) The security remaining after any lawful deductions are made.

26 (2) An itemization of any lawful deductions from any security
27 received.

28 (3) His or her election under paragraph (1) or (2) of subdivision
29 (h).

30 This subdivision does not affect the validity of title to the real
31 property transferred in violation of this subdivision.

32 (j) In the event of noncompliance with subdivision (h), the
33 landlord's successors in interest shall be jointly and severally liable
34 with the landlord for repayment of the security, or that portion
35 thereof to which the tenant is entitled, when and as provided in
36 subdivisions (e) and (g). A successor in interest of a landlord may
37 not require the tenant to post any security to replace that amount
38 not transferred to the tenant or successors in interest as provided
39 in subdivision (h), unless and until the successor in interest first
40 makes restitution of the initial security as provided in paragraph

1 (2) of subdivision (h) or provides the tenant with an accounting as
2 provided in subdivision (g).

3 This subdivision does not preclude a successor in interest from
4 recovering from the tenant compensatory damages that are in
5 excess of the security received from the landlord previously paid
6 by the tenant to the landlord.

7 Notwithstanding this subdivision, if, upon inquiry and reasonable
8 investigation, a landlord's successor in interest has a good faith
9 belief that the lawfully remaining security deposit is transferred
10 to him or her or returned to the tenant pursuant to subdivision (h),
11 he or she is not liable for damages as provided in subdivision (l),
12 or any security not transferred pursuant to subdivision (h).

13 (k) Upon receipt of any portion of the security under paragraph
14 (1) of subdivision (h), the landlord's successors in interest shall
15 have all of the rights and obligations of a landlord holding the
16 security with respect to the security.

17 (l) The bad faith claim or retention by a landlord or the
18 landlord's successors in interest of the security or any portion
19 thereof in violation of this section, or the bad faith demand of
20 replacement security in violation of subdivision (j), may subject
21 the landlord or the landlord's successors in interest to statutory
22 damages of up to twice the amount of the security, in addition to
23 actual damages. The court may award damages for bad faith
24 whenever the facts warrant that award, regardless of whether the
25 injured party has specifically requested relief. In any action under
26 this section, the landlord or the landlord's successors in interest
27 shall have the burden of proof as to the reasonableness of the
28 amounts claimed or the authority pursuant to this section to demand
29 additional security deposits.

30 (m) ~~No (1)~~ *Except as otherwise provided in paragraph (2), a*
31 *lease or rental agreement may not contain any provision*
32 *characterizing any security imposed by the landlord as*
33 *"nonrefundable."*

34 *(2) A premium paid for a bond or commercial insurance policy*
35 *to secure the performance of the terms and conditions of a rental*
36 *agreement may be characterized as "nonrefundable" in a lease*
37 *or rental agreement.*

38 (n) Any action under this section may be maintained in small
39 claims court if the damages claimed, whether actual or statutory

1 or both, are within the jurisdictional amount allowed by Section
2 116.220 or 116.221 of the Code of Civil Procedure.

3 (o) Proof of the existence of and the amount of a security deposit
4 may be established by any credible evidence, including, but not
5 limited to, a canceled check, a receipt, a lease indicating the
6 requirement of a deposit as well as the amount, prior consistent
7 statements or actions of the landlord or tenant, or a statement under
8 penalty of perjury that satisfies the credibility requirements set
9 forth in Section 780 of the Evidence Code.

10 (p) The amendments to this section made during the 1985
11 portion of the 1985–86 Regular Session of the Legislature that are
12 set forth in subdivision (e) are declaratory of existing law.

13 (q) The amendments to this section made during the 2003
14 portion of the 2003–04 Regular Session of the Legislature that are
15 set forth in paragraph (1) of subdivision (f) are declaratory of
16 existing law.